

Sharing a life. Sharing assets.



How the new
*Common-Law Partners' Property
and Related Amendments Act*
will affect your common-law
relationship

What is The Common-Law Partners' Property and Related Amendments Act?

This act creates new property rights and obligations for people in common-law relationships. The act will become law in Manitoba on June 30, 2004.

How does this act affect Manitobans in common-law relationships?

If you are in a common-law relationship – that is, living in an intimate relationship with a person you are not married to – the act may have a significant impact on you. When it comes into force on June 30, 2004, laws in Manitoba affecting the property rights of married couples will also apply to unmarried couples, or common-law relationships. This means that if a common-law couple separates, each partner is entitled to half the value of the property acquired by the couple during the time they lived together, just like married couples. It also means that if one of the partners dies, the surviving common-law partner will have a claim to his or her estate.

Registering your common-law relationship

The act creates a new registry, (that will begin operation June 30, 2004) giving common-law partners (who are adults and living in Manitoba) the opportunity to register their relationship, if they wish to do so. Once a relationship is registered, all the major property laws immediately apply

to the couple in the same way they now apply to married couples.

Registration, however, is completely voluntary. Common-law couples are not required to register. Couples who wish to register may contact:

The Vital Statistics Agency
254 Portage Avenue
Winnipeg, Manitoba R3C 0B6
Phone: 204-945-3701
Toll Free: 1-800-282-8069 Ext. 3701

If you choose not to register

Even if you do not register, the property laws will apply after three years. Note, that in some cases, it is less than three years. Please consult a lawyer to find out what the time period is for your situation.

Living together? Things you should know about *The Common-Law Partners' Property and Related Amendments Act...*

This act will apply to couples already living together when it comes into force on June 30, 2004. At that time, if you have lived together as a couple for three years or more, you will automatically be considered a common-law couple and subject to the same property rights that govern married couples.

If you have lived together as a couple for less than three years, the act will apply as soon as the three-year period is complete, even if the bulk of that time occurred before the act became law.

For some property laws, if a common-law couple has had a child or adopted a child, the three year period is reduced to one year. In this situation, after living together for one year, you will be considered common-law partners under *The Intestate Succession Act*. This is the law that directs who gets your estate if you die without a will. You may also qualify as common-law partners for pension sharing purposes if you've only lived together for one year, provided neither partner is married to someone else.

If you choose to register your relationship, the new property laws will apply to you and your partner immediately upon registration.

Current state of the law

Right now, the law treats legally married spouses as equal partners in their marriage regardless of the particular role played by each partner. The law says that if spouses separate, each person is entitled to half the value of all property acquired by both of them during the marriage. This includes pensions. If a spouse dies without a will, the law says that all, or most of the deceased's property will go to the surviving spouse.

After June 30, 2004, these laws will also apply to couples living together in common-law relationships.

Opting Out

If you and your partner do not want to be subject to the rights and responsibilities of these new property sharing laws, you can opt out. Just like married couples can sign agreements that release them from property distribution laws, common-law couples can enter into similar agreements.

To become exempt from these property distribution laws, you and your partner must agree, and the agreement must be in writing. Opting out of the provisions dealing with pensions and estates, however, is more complicated.

Terminating a common-law relationship

A registered common-law relationship can only be terminated by registering a dissolution, and only once the couple has lived apart for at least one year. If a common-law relationship was never registered, it can only be terminated by the passage of time. In most cases, this is three years of living apart.

The termination date affects some rights, such as the right to apply to court for a division of property. But while some rights and responsibilities end when you stop living together, others continue beyond termination. You should speak to a lawyer to find out what your rights and obligations are in your particular situation.

FREQUENTLY ASKED QUESTIONS

Q. I have been living with a roommate for over three years. Does the act apply to us?

A. That depends on the nature of the relationship. Many factors may be considered, including whether you have a sexual relationship, your commitment to one another, your participation in community activities as a couple, and so on.

Q. Does the act affect gay and lesbian couples?

A. Yes. This law applies to all people living together in intimate relationships. It applies equally to individuals in heterosexual and homosexual relationships.

Q. I was in a common-law relationship for five years, but we separated a few months ago. Can my former partner get half my property when the act goes into effect?

A. No, the new act does not apply to couples who separate permanently before it comes into force. Nor does it apply in situations where one of the partners dies before the act becomes law.

Q. I am a widow with grown children and have just moved in with a man. My will provides that when I die, my property will go to my children and not my common-law partner. Am I affected by this new law?

A. Yes and no. If you die before you and your partner have lived together for three years, this new law will have no effect on your estate. However, if your death occurs after you've lived together for three years or more, and your will does not provide sufficiently for your common-law partner, he can apply for an accounting and division of assets under *The Family Property Act*. This can be avoided if you and he make a written agreement not to share your property. **You should consult a lawyer about what you must do to have an appropriate estate plan in place.**

VERY IMPORTANT:

*Before entering into a cohabitation agreement, separation agreement or any other written document signed by both partners, **consult a lawyer to ensure that you are fully aware of the rights you are giving up and/or the obligations you are assuming.***

For additional information on *The Common-Law Partners' Property and Related Amendments Act* visit the Manitoba Justice website at:

www.gov.mb.ca/justice/family/familyindex.html